No. 2572

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

G. J. BUCHLER,

Appellant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY (a corporation),

Appellees.

ANSWERING BRIEF OF APPELLEE, W. W. BLACK, TO APPELLANT'S REPLY BRIEF.

W. W. BLACK,
In Propria Persona,

L. L. BLACK,
ROBT. MCMURCHE,
Stokes Building, Everett, Washington,
Solicitors and Counsel for Appellee, W. W. Black.

Filed this.....day of May, 1915.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

PERNAU PUBLISHING COMPANY, SAN FRANCISCO

No. 2572

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

G. J. BUCHLER,
Appellant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY (a corporation),
Appellees.

ANSWERING BRIEF OF APPELLEE, W. W. BLACK, TO APPELLANT'S REPLY BRIEF.

In answer to reply brief of appellant we desire to call attention to a few points as nearly every proposition is treated in our briefs.

I.

Technically the court of appeals can not say from the records that there was any defect in the service in the state court as the transcript does not pretend to set up the whole of the record in the state court. The transcript only purports to give "excerpts" (Tr. p. 114).

On the merits, however, all that can be claimed is that service was defective.

The rule laid down in 23 Cyc. 1075 d, referred to in appellee Black's brief, page 25, as well as Black on Judgments, sec. 223, page 271, fully disposes of that matter.

In Galpin v. Page, 18 Wallace, 350, a distinction is made as to judgments of courts where defendant resides in jurisdiction.

The Sunset Copper Mining Company was a Washington corporation residing in the county where action was pending.

Black's answer does not admit that there was no proper service. It admits that there was no service by publication. Publication was not proper as the defendant resided in the county where action was pending.

We contend that the record shows service that was valid. We also contend that as there was service of summons actually upon the president that imperfections in the summons or the manner of service does not authorize collateral attack (Black's brief, pp. 24, 25 and 26, and authorities).

We contend, also, that the general appearance by attorney Locke and the appearance of stockholders in the case for themselves and "other stockholders" cures defects, if any.

The instant case is one in equity and if this court finds that the judgment in the state court is righteous

and is one the court should make if all the parties were before it in the light of the evidence in this case, it will not in effect set aside the judgment in the state court, when it is evident that no court, when parties are before it, could render a different judgment.

It seems to us that even if there was a defect in the service in the state court, even though there had been no general appearance by the defendant by its attorney and by its stockholders and their attorneys, that as this is an action to have Bell and Black declared to be trustees, appellant can not be heard to say that they have no title. If no title they have nothing for which to be trustees (Black's brief, p. 28).

Beyond this, however, appellant can not be allowed to play fast and loose with the court.

He solemnly waived the point of no jurisdiction in state court, in writing, in the district court and can not now be heard to urge this point (Tr. p. 23).

II.

As to rule 94, counsel for appellant contends that their allegations in bill of complaint takes the case out of the rule.

We contend that mere allegations in bill, not sustained by at least some evidence, is not sufficient.

Why require allegations to be made if they do not need to be proven?

The authorities cited by appellant, therefore, are not in point.

Counsel can not be heard to now claim that the defendant corporation was defunct at the time his action was commenced, as he alleged it was an existing corporation then; the lower court found it was a corporation and in his opening brief he described it as an existing corporation (Tr. pp. 3 and 4).

This point being raised in his reply brief for first time.

III.

Appellant's reply brief (p. 15) makes the claim that appellant brought his action for himself and "other stockholders" because he testified: "I instituted this suit to safeguard the interests of the company".

We submit that the nature of the action must be determined from the pleadings, not by some statement of a witness.

IV.

Pages 16 and 17 of appellant's reply brief claims appellant showed he was injured because appellees admitted that property was worth $40,000.00.

If the company's property was worth $40,000.00 and it owed $64,000.00, the stock was worthless at the time

Bell brought his action and when the property was sold. It is still worthless as the debt has increased.

Putting back the property subject to the debts would not give stock any value.

The property was sold in strict conformity of the laws of Washington by a receiver of an insolvent corporation, the Washington laws expressly providing for this as shown in our brief.

Bell and Black, after the sale, offered to allow stockholders to participate in the bid of $40,000.00. Counsel for appellant complains that this was not done at a meeting regularly called and that Buchler was not there. Buchler knew of the offer and the meeting as shown by the testimony as detailed in our brief.

Bell and Black did not want the property but were forced to take it or lose their valid claims.

Appellant in an equity court is relying wholly upon technicalities and does not suggest that equity be done.

He wants a receiver to be appointed, knowing that the fees of receiver and of his attorneys will consume a good portion of the property and injure Bell and Black because this expense must come from the property.

He knows a receiver will not help stockholders but hopes it will injure Bell and Black.

We submit an equity court will not appoint a receiver when it is evident the property is not sufficient to pay the debts when it is self-evident the sole purpose is to add to the expenses of Bell and Black who continued to

advance money to the corporation when everyone else refused to aid it.

Respectfully submitted,

W. W. Black,
In Propria Persona,
L. L. Black,
Robt. McMurchie,
Solicitors and Counsel for Appellee,
W. W. Black.